The real difficulty is to explain the use of formal in its everyday sense as the opposite of essential, as when we say, "the distinction is merely formal but there is no real difference." There seems to be some squinting at this in the use of the word ἰδέα by PLATO which contains the root of the Greek equivalent of our word "see." We *see* only what is superficial and not the real essence of the thing, but this side of the concept was apparently not prominent in PLATO's mind and although ARISTOTLE calls εἶδος the "form," he means by it not the outward appearance but the sum of its specific determinants by virtue of which a thing is what it is. The mediævalists use formal generally in the sense of essential while all the examples of English usage given by the Oxford Dictionary of the meaning superficial or non-essential come from a comparaively late period. This may or may not be indicative of the fact that its use in this sense has developed in modern times.

J. H. D.

THE LIABILITY OF A THIRD PERSON FROM WHOM AN ATTACHING OFFICER TAKES A RECEIPT FOR THE GOODS ATTACHED.—*Stannard* v. *Tillotson* (Vt. 1914), 90 Atl. 950, presents some interesting questions as to the law governing the relations arising between the attaching officer and the receiptor for attached property.

In the New England States and New York the officer making an attachment commonly accepts a simple receipt from a responsible third party, instead of seizing the property itself or taking a forthcoming bond. The property may be actually delivered to the receiptor or left with the debtor, but the receiptor acknowledges possession of the property and promises to deliver it to the officer on demand. These receipts are not uniform, are not required to be so, and may be refused by the officer. Their validity is upheld and favored by the courts of the states mentioned, but seems generally not to rest upon the authority of statutes. In the principal case the statute provided for the acceptance of a receipt by the officer, but the court evidently decides the case upon the authority of the law as laid down by previous decisions. Similar cases outside of the states mentioned are not numerous, but some instances of a like practice have been seen in Illinois, Kentucky, and Wisconsin. See DRAKE, ATTACHMENT, 7th ed., § 344 et seq.; also WADE, ATTACHMENT AND GARNISHMENT, § 170 et seq.

In the principal case the plaintiff, a constable, attached realty and personalty, pursuant to PUBLIC STATUTES OF VERMONT, §§ 1452-54, by lodging a copy of the writ with the return in the town clerk's office, leaving the property in the custody of the debtor and taking a receipt therefor from the defendant, a stranger. Subsequently the plaintiff, at the suits of other parties, levied second and third attachments on the same property by lodging copies of the writs and the returns in the town clerk's office, but did not take physical possession thereunder. The second and third attachments were later dissolved. Subsequently a fourth attachment was levied, and upon an ensuing judgment and execution the plaintiff seized the goods. Previous to the seizure the debtor had sold a portion of the personal property. The plaintiff sued the defendant for the total value of the goods as shown by the receipt.

The court *held*: 1. That the first levy was valid. 2. That a receipt purporting to be for realty and personalty was valid as to the personalty. 3. That the second and third levies did not relieve the receiptor from liability. 4. That the fourth levy relieved the receiptor from liability to the extent of the value of the goods actually taken.

1. On the first point the court says, "The plaintiff, by the attachment, had the possession and the right of possession. . . . Between the plaintiff and the defendant the possession and the right of possession remained as before the receipt was given." This is a curious legal fiction, but it is the doctrine of a majority of the courts of the states where the custom of receipting for levied property is common. *Beach* v. *Abbott*, 4 Vt. 605; *Buzzell* v. *Hardy*, 58 N. H. 331; *Jordan* v. *Gallup*, 16 Conn. 535; *Tomlinson* v. *Collins*, 20 Conn. 364; *Peters* v. *Stewart*, 45 Conn. 109, 110; *Alsop* v. *White*, 45 Conn. 503; *Burkhardt* v. *Maddox Co.*, 9 Ky. Law Rep. 442; DRAKE, ATTACHMENT, 7th ed., § 351. An early Massachusetts case apparently lays down a contrary doctrine to the effect that there is no constructive possession in the officer when he has left goods in the possession of the debtor (*Knap* v. *Sprague*, 9 Mass. 258, 6 Am. Dec. 64), and there are expressions importing the same theory in *Bridge* v. *Wyman*, 14 Mass. 190, and *Boynton* v. *Warren*, 99 Mass. 172; but later decisions in Massachusetts hold that as between the parties the lien continues. *Wentworth* v. *Leonard*, 4 Cush. 414; *Colwell* v. *Richards*, 9 Gray 374; *Thayer* v. *Hunt*, 2 Allen 449. See also DRAKE, ATTACHMENT, § 351. Bulky goods, under REV. STATUTES OF MASS., c. 90, § 33, may be attached without assumption of actual possession. *Polley* v. *Lenox Iron Wks.*, 15 Gray 513. Maine seems to follow the earlier Massachusetts doctrine, some of the cases citing *Knap* v. *Sprague*, *supra*. *Pillsbury* v. *Small*, 19 Me. (1 App.) 435; *Waterhouse* v. *Bird*, 37 Me. 326.

2. Although the receipt was given for realty and personalty, the court held that it was valid only for the personalty. These contracts are, in some aspects, contracts of bailment. No case has been found where they have been given for realty, except in the present instance.

3. On the third point the court reasoned that the relations of the parties were not changed, that the second and third levies without actual seizure "vested the plaintiff with no different control over the property than he already had." The court considers that the possession of the defendant was in law the possession of the plaintiff; and, despite the fact that in the first instance the lodgment of the writ without actual seizure gives the officer possession in law and constitutes a valid levy in Vermont, comes to the conclusion that under subsequent levies the assumption of physical control by the officer is necessary to discharge the receiptor from liability. From this the logical conclusion would seem to be that the mere lodgment of a junior writ in the clerk's office, by the officer who made the first levy under which the debtor holds from the receiptor, will not operate to discharge the lien of the senior attachment unless the case proceed to judgment and seizure upon execution, or unless for some other reason the officer take manual possession of the property. This is the position taken by the supreme court of New Hampshire, which has held that if the receiptor retain actual posses-

sion of the property the sheriff may make a valid attachment by a return of the writ and notice to the receiptor, *Whitney* v. *Farwell,* 10 N. H. 9; *contra, French* v. *Watkins,* Smith 49; but if the receiptor allow the debtor to retain possession, a second attachment cannot be made without a new seizure, *Whitney* v. *Farwell, supra.* Although the New Hampshire decision is not cited in the principal case, the Vermont court evidently construes the statute to be merely declaratory, and decides this point in accordance with the law as settled in previous decisions.

4. The decision on the fourth point follows the doctrine consistently maintained by the Vermont courts. After actual seizure from the debtor upon a subsequent levy, the officer is held to have possession as though by demand on the receiptor, and is estopped from asserting the priority of the subsequent attachments. *Beach* v. *Abbott, et al., supra; Rood* v. *Scott,* 5 Vt. 263; *Kelly* v. *Dexter et al.,* 15 Vt. 310; *Rider* v. *Sheldon,* 56 Vt. 459. No cases exactly in point from other states are found. It is held, however, that a subsequent physical seizure on another writ by a deputy of the sheriff without the latter's knowledge will not relieve the receiptor of the sheriff from liability, on the ground that the acts of the deputy are not the acts of the sheriff. *Flanagan* v. *Hoyt,* 36 Vt. 565, 86 Am. Dec. 675. Although nominally the contract is one of bailment and on its face the promise of the receiptor to deliver the goods or their value is absolute and unconditional, the rule is generally recognized that the law operates to make the contract contingent, and it is in effect a contract to indemnify the officer to the extent of his liability to the attaching creditor and debtor. Upon such a theory as to the nature of the contract, to hold the receiptor liable after seizure by the officer under a subsequent writ would be to indemnify the officer for a loss caused by his own act. Under many circumstances, the liability of the receiptor is entirely dependent upon the liability of the officer (*Allen* v. *Carty,* 19 Vt. 65; *Plaisted* v. *Hoar,* 45 Me. 380; *Howard* v. *Smith,* 12 Pick. 202; *Roberts* v. *Carpenter,* 53 Vt. 678; *Bissell* v. *Huntington,* 2 N. H. 142); and, as a general rule, any state of facts which shows that the officer is under no liability to apply the property to the debt of the creditor or return it to the debtor or other owner is a sufficient defense to an action by the officer against the receiptor. *Wright* v. *Dawson,* 147 Mass. 384; *Drayton* v. *Merritt,* 33 Conn. 184; *Moulton* v. *Chapin,* 28 Me. 505. Thus, the receiptor may show that the property has been taken from him by the owner by virtue of paramount title, which rule applies generally in cases of bailment (*Learned* v. *Bryant,* 13 Mass. 224; *Denny* v. *Willard,* 11 Pick. 519); or that it was exempt from attachment and has been given up to the debtor (*Thayer* v. *Hunt,* 2 Allen 449; *Stone* v. *Sleeper,* 59 N. H. 295); or that the attachment was dissolved by the insolvency of the debtor (*Sprague* v. *Wheatland,* 3 Met. 416; *Grant* v. *Lyman,* 4 Met. 470; *Andrews* v. *Southwick,* 13 Met. 535; *Butterfield* v. *Converse,* 10 Cush. 317; *Lewis* v. *Webber,* 116 Mass. 450). But it seems that if the receiptor acknowledge in the receipt that the property is the defendant's and is of a certain value, and that he will deliver it or pay the amount of the debt and the costs recovered, he may not defend him-

self by proof that the goods were exempt from attachment. *Bacon* v. *Daniels,* 116 Mass. 474; *Stevens* v. *Stevens,* 39 Conn. 474. Nor may the debtor set up as a defense that the attachment was nominal, that the goods were never really seized nor delivered to him. *Jewett* v. *Torrey,* 11 Mass. 219; *Lyman* v. *Lyman,* 11 Mass. 317; *Morrison* v. *Blodgett,* 8 N. H. 238; *Spencer* v. *Williams,* 2 Vt. 209; *Lowry* v. *Cady,* 4 Vt. 504; *Allen* v. *Butler,* 9 Vt. 122; *Bowley* v. *Angire,* 49 Vt. 41; *Stimson* v. *Ward,* 47 Vt. 624; *Phillips* v. *Hall,* 8 Wend. 610; *Webb* v. *Steele,* 13 N. H. 230; *Howes* v. *Spicer,* 23 Vt. 508. In Vermont a construction which in its implications is contra to the general doctrine and is not necessary to protect the officer is put upon the contract in holding that the receipt is conclusive upon the receiptor as to the goods, their value, and their ownership. *Bowley* v. *Angire,* 49 Vt. 41; *Catlin* v. *Lowry,* 1 D. Chipman 396. H. H.

THE WISCONSIN MARRIAGE LAW UPHELD.—All doubts as to the constitutionality of the so-called "Wisconsin Eugenics Law" were resolved in its favor when the Supreme Court of Wisconsin in *Peterson* v. *Widule, County Clerk* (Wis. 1914), 147 N. W. 966, reversed the decision of the lower court. The Statute (ST. 1913, § 2339M) requires all male persons applying for a marriage license to file with the county clerk a physician's certificate that they are free from acquired venereal disease 15 days prior to the application. The action was mandamus to compel issuance of a license, petitioner being unable to secure an examination for the fee provided in the statute. The lower court gave judgment for petitioner and the county clerk appealed. The Supreme Court held that the statute is constitutional and is a valid exercise of the police power. It is neither an unreasonable restriction on the right to marry, nor a restraint of the right to enjoy life, liberty and the pursuit of happiness, nor is it based on an unreasonable classification because it does not require the same certification on the part of the women, all of which reasons were urged against it. The Wasserman test is not required as by words "recognized tests" the legislative intent was to include only those tests which can be made by a physician with the ordinary laboratory apparatus.

This decision shows the tendency of modern legislation and legal thought to find a solution for the elimination of evils springing up in a complex civilization and to create laws which will subserve the public good and at the same time eliminate as far as possible any substituted evils. This latter forms the basis of the chief criticisms against the law and is pointed out in a concurring and a dissenting opinion. The former censures the law severely, calling it "about as silly and obnoxious a piece of legislation as could be devised." It is also claimed against the wisdom of such a law that it tends to discourage marriage rather than to prevent the evil it was designed to remedy; that it tends to increase immorality rather than prevent it and, so favors an increase of venereal diseases, and that no necessity for it exists, as any prospective bride may amply protect herself as well as the legislation will protect her, and at the same time the half imputed stigma which the